

The 7th June, 1983

No. ID/RTK/33-83/26202.—Whereas the Governor of Haryana is of the opinion that an industrial dispute exists between the workman Shri Hawa Singh and the management of Secretary, Haryana State Electricity Board, Chandigarh, II. Executive Engineer Haryana State Electricity Board operations, Narwana, regarding the matter hereinafter appearing;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana hereby refers to Labour Court, Rohtak constituted under section 7 of the Industrial Disputes Act, 1947,—*vide* Government notification No. 3864.ASO(E)-Lab-70/13648, dated 8th May, 1970 read with Government notification No. 9641-I-Lab-70/32573, dated 6th November, 1970 the matter specified below being either matter in dispute or matters relevant to or connected with the dispute as between the said management and the workman for adjudication :—

Whether the termination of service of Shri Hawa Singh is justified and in order ? If not, to what relief is he entitled ?

No. ID/YMN/30-83/26210.—Whereas the Governor of Haryana is of the opinion that an industrial dispute exists between the workman Shri Mahabir Singh and the management of Executive Engineer, Sub Urban (Operation) Division, Haryana State Electricity Board, Jagadhri Near Waryam Singh Hospital, regarding the matter hereinafter appearing ;

And whereas the Governor of Haryana considers it desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana hereby refers to the Labour Court, Faridabad, constituted,—*vide* Government notification No.11495-G-Lab/57/11245, dated 7th February, 1958, read with notification No. 5414-3 Lab-68/15254, dated 20th June, 1968, under section 7 of the said Act, the matter specified below, being either matter in dispute or matter relevant to or connected with the dispute as between the said management and the workman for adjudication:—

Whether the termination of service of Shri Mahabir Singh is justified and in order ? If not, to what relief is he entitled ?

V. C. CHAUDHRI,

Deputy Secretary to Government Haryana,
Labour Department.

LABOUR DEPARTMENT

The 13th May, 1983

(**No. 9(1)82-6 Lab/3679.**—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Hindustan Machine Tools, Pinjore, Distt. Ambala,

IN THE COURT OF SHRI HARI SINGH, KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 110 of 1982

between

SHRI JAI RAM SINGH, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S
HINDUSTAN MACHINE TOOLS PINJORE, DISTRICT AMBALA.

Shri P. S. Chauhan, for the workman.

Shri J. S. Bawa for the respondent-management.

AWARD

This reference No. 110 of 1982 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/AMB/35/82/22703, dated 18th May, 1982, under section 10 (i)(c) of the Industrial Disputes Act, 1947, existing between Shri Jai Ram Singh, workman and the respondent-management of M/s Hindustan Machine Tools Limited Pinjore, district Ambala. The term of the reference was:—

Whether the termination of service of Shri Jai Ram Singh was justified and in order? If not to what relief is he entitled?

The notices were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to demand notice and claim statement is that the claimant was employed in the respondent management as Driver on 5th November, 1963 in the scale of Rs. 100-6-160. The workman was required to submit any proof of his date of birth for the record of the company. The workman mentioned his date of birth as 27th January, 1928 in the declaration from which was supplied to the workman by the company. The age of retirement according to the service rules of the respondent company was 58 years. As such the workman was to retire from the service of the respondent company on 31st January, 1986, but the respondent company retired the workman from its service on 31st October, 1981. On the asking of respondent the workman has submitted the proof of his age from Civil Surgeon, Rohtak on 1st September, 1981 in which the workman was declared 54 years of age. Thus the action of the respondent company retiring the workman from its service on 31st October, 1981 was *mala fide* and unjustified and is not covered by the provision of Section 2(oo)(b) of the Industrial Disputes Act, 1947. The workman was not paid compensation under section 25-F of Industrial Disputes Act, 1947. The company failed to give a reasonable opportunity to the workman in between the period from 20th September, 1981 to 31st October, 1981. So it is a termination and not retirement. The respondent management has not complied with the provisions of Section 25-F of the Industrial Disputes Act, so it is illegal and void termination and the workman is entitled for reinstatement continuity of service and back wages.

The case of the respondent according to the written statement is that it is admitted that the workman mentioned his date of birth in Company's attestation form as 27th January, 1928. The workman concerned besides mentioning date of birth was required to submit authenticated proof of his date of birth which he did not so. So it was open for the management as per clause 24 of the standing orders to advise him either to produce authenticated proof of his age or get himself medically examined from the Company Medical Doctor. It is not admitted that the Personnel Manager confirmed the date of birth i. e. 27th January, 1928 while issuing to the workman identity card on 1st January, 1976 in incorporating his wrong date of birth which was subsequently corrected by issuing letters dated 5th June, 1980 and 12th June, 1980 advising him to produce authenticated proof of his date of birth. According to the service rules of the company the retirement age of the workman was 58 years and the company rightly retired the concerned workman on 31st October, 1981 upon reaching the age of superannuation. The workman did not produce any authenticated proof of his age despite affording him opportunities to supply the proof of age, he was referred to Administrative Medical Officer. According to his letter dated 8th November, 1968 the concerned workman was informed that his age was determined about 45 years as on 23rd October, 1968 and invited his objection, if any by 15th November, 1968. This principle was followed by the court also in some cases. But the applicant remained silent which would mean that the applicant had accepted the age verification done by the Company's Administrative Medical Officer. This means the workman had acquiesced and the doctrine of estoppel applies. The company informed the applicant about his superannuation from services of the Company from 31st October, 1981. The Company had made it clear to the workman that he should have produce the medical certificate from Civil Surgeon, Ambala where the company carries its business at Ambala. The workman produced original copy of medical examination report of age issued by Civil Surgeon, Rohtak declaring him 54 years of age. The company objected the validity of age certificate issued in favour of the workman by the Civil Surgeon Rohtak, because the company carries its business at Pinjore, Ambala District. So he had no liberty to produce age certificates from any other district except from Ambala. Clause 24 of the standing orders contemplates "The Civil Surgeon" which implies Civil Surgeon, Ambala only. The applicant obtained age certificate from Civil Surgeon, Rohtak with *mala fide* intention. The applicant at the time of joining duty submitted attestation from mentioning therein the place of his birth Sitawali, district Rohtak. The applicant did not produce any proof of his date of birth at the time of joining and was taken on duty as special case with the condition to submit the same later on. The applicant was advised to produce school leaving certificate or certified extract from the registrar of birth and death latest by 30th September, 1968 which the workman failed and the company examined the workman through their Administration Medical Officer's and according to his report the applicant age of superannuation is 31st October, 1981 and the company retired him on that date. The applicant was informed that he would be retiring from the services on 31st October, 1981. In response of this letter dated 12th March, 1981, the applicant informed that since he was born in Pakistan much before the partition so he was unable to produce the extract from the Register, Birth and Death. This was clearly after thought and just to mis-guide the management because the applicant never objected

or informed that his place of birth had been wrongly mentioned in the application from as well as in Attestation from which was duly filled and signed by him at the time of joining the duties and after issuing him retirement letter, the applicant changed his stand that he was born at Pakistan cannot be believed at all. Thus the action of the company is justified, legal and based on all four corner of law. It is a clear out case of retirement on reaching the age of superannuation hence provision of section 25-F does not apply. So the workman is not entitled to any relief and the reference be answered in their favour.

On the pleadings of the parties, following issues were framed :—

1. Whether the workman is removed after attaining the age of retirement ? If so, to what effect ?
2. Whether the termination of services of the workman is proper, justified and in order ? If not to what relief is he entitled ?

My findings on the issues are as under :—

Issue No. 1.—

The representative of the respondent argued on this issue as stated by Shri Akbir Singh Kahno, Personal Officer as MW-1, the claimant joined his duty in November, 1963 as Driver and he was given appointment Ex. M-1. The applicant gave application form for employment Ex. M-2 in which he gave his date of birth as 27th January, 1928. The claimant also gave attestation form at the time of joining of duty, in which he has never mentioned his place of birth as Pakistan which is Exhibit M-3. He further stated that the applicant has mentioned in place of birth as village Sitwali, Post Office Sonepat, district Rohtak in Exhibit M-2 and M-3. The claimant has not given any proof of age during his service. The management issued Exhibit M-4 in September, 1968 to give documentary certificate about his age, otherwise according to the Company's doctor advise, his age will be fixed. Despite this the workman did not give any proof and the management sent him for medical examination,—vide Exhibit M. 5. The doctor fixed his age 45 year in 1968,—vide Exhibit M-6 and,—vide Exhibit M-7 the company again demanded any objection for fixing his age 45. The workman did not reply to this letter. Like this the management wrote Exhibit M-8 and M-10 but the claimant did not reply to these letters. At last the respondent issued Exhibit M-11 in which they have stated that the claimant is going to retire on 31st October, 1981 after attaining the age of 58 years. In respondent to this letter the workman wrote Exhibit M-12 in which he has stated that he was born in Pakistan, so he could not give any proof of his age. The workman gave a medical certificate Exhibit M-13, then the management advised him to get himself medically examined from the Chief Medical Officer, Ambala and give the certificate within 15 days otherwise he will be deemed to have been retire on 31st October, 1981. The workman did not submit the medical certificate of C. M. O. Ambala so he was retired from service on 31st October, 1981,—vide Exhibit M-14. He further argued that at the time of appointment he has written his place of birth District Rohtak, but after that when he was going to retire he wrote to the management that he was born in Pakistan, which cannot be believed. This shows that his date of birth was not correct and when he was pressed to get himself medically examined from the C. M. O. Ambala, he got the medical certificate from Rohtak with *malafide* intention as he belongs to that place. So this certificate cannot be believed. The factory does its business in Ambala District, the workman should have produced the medical certificate from C. M. O. Ambala, which he has failed after giving him many opportunities. Then the company's Administration Medical Officer determined his age about 45 years as on 23rd October, 1968 and invited his objection by 15th November, 1968. But the applicant remained silent which would mean that the applicant had accepted the age of verification done by the Company's doctor. This fact was also held in the case of R—Veukatchalam *Versus* Personal Officer, Southern Railway (1970). So the action of the company is justified and legal. This is case of superannuation and the respondent has retired the workman after attaining the age of 58 years. There is no illegality in orders of the respondent and hence the workman is not entitled to any relief.

The representative of the workman argued on this issue that as stated by the workman as WW-1, he was given appointment letter Ex. M—1 and there is no column in which his date of birth was shown. He wrote Exhibit W-1 to W-10 about his age and he was also giving the replies of the letter written by the respondent management. The respondent retired from service,—vide Ex M—14. He further argued that the age of retirement of the workman according to service rules of the respondent company was 58 years and the workman was to retire from the service on 31st January, 1966, but the

respondent retired from 31st October, 1981. The workman submitted the proof of his age from C.M.O., Rohtak, on 1st September, 1981 in which the workman was declared 54 years of age. The management did not consider this document and asked to Medical Certificate from C. M. O., Ambala as the factory is functioning in District Ambala which is illegal. The workman was asked to bring the birth certificate from Registrar, Birth and Death, but the workman was born in Pakistan so he cannot brought this certificate. The place of birth given in Ex- M-1 and M-2 are not correct as he was born in Pakistan. He further argued that the management should have rely on the medical certificate of C.M.O., Rohtak and not on Company's doctor as he has given the report on the asking of the management. The workman was illegally terminated before reaching the age of superannuation i. e. 58 years so he is entitled for reinstatement, continuity of service and back wages.

After hearing the arguments of both the parties, and going through the file. I am of the view that the respondent management has fully proved their case. As per standing order clause 24 the workman has to give the authenticated proof of his age or get himself medically examined from the Company Medical Doctor. The respondent wrote many letter for giving the proof of his age. But when he failed to do so then the management got him medical examined from the Company's doctor. At the time of retirement the management again wrote to bring authenticated proof of his age otherwise he will be retired on 31st October, 1981 according to the examination of Company's doctor. The workman got a medical certificate from C. M. O., Rohtak with *malafide* intension as he is resident of this district through some approach. The workman was working in Ambala District he should have brought the medical certificate from C. M. O., Ambala. But he went to Rohtak and managed this certificate through some approach which cannot be believed at all. The workman failed to obey the orders of the respondent, so they legally retired the workman after attaining the age of 58 years and this issue is decided in favour of respondent and against the workman.

Issue No 2.—

After deciding issue No. 1 in favour of the respondent and against the workman there is no need to discuss this issue at length. This is not a case of termination but of retirement and the respondent has legally retired the workman after reaching the age of superannuation. So the workman is not entitled to any relief and this issue is also decided against the workman and in favour of the respondent.

Dated the 8th April, 1983.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 766, dated 15th April, 1983

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1) 82-Lab./3689.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 of Act No. XIV of 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Roadways, Rohtak.

BEFORE SHRI INDER SINGH DHULL, PRESIDING OFFICER, LABOUR COURT
HARYANA, ROHTAK

Reference No. 19 of 1981

between

SHRI RAM KISHAN WORKMAN AND THE MANAGEMENT OF M/S HARYANA ROADWAYS,
ROHTAK

Present :—

Shri S. S. Gupta, for the workman.

Shri S. C. Singal, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/RTK/84-80/3413, dated 21st January, 1981, under section 10 (i) (c) of the I. D. Act, for adjudication of the dispute existing between Shri Ram Kishan, workman and the management of M/s Haryana Roadways, Rohtak. The term of the reference was :—

Whether the termination of services of Shri Ram Kishan was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared, filed their respective pleadings and the following issues were framed by my learned predecessor on 1st September, 1981 :—

1. Whether the domestic enquiry conducted by the management is fair and proper?
2. As per the term of reference?

The management examined Shri O. P. Trikha, Traffic Manager, Yamuna Nagar, as MW-1 and Shri Pnwan Kumar, Clerk, Haryana Roadways, Rohtak, as MW-2 and closed their case. The workman examined himself as his sole witness and closed his case. I heard the arguments of the parties and decide the issues as under :—

Issue No. 1 :—

On this issue Shri O. P. Trikha, Traffic Manager, Haryana Roadways, Yamuna Nagar was examined by the management. He deposed that he conducted enquiry against the concerned workman. He gave opportunity to the concerned workman to participate in the enquiry and he availed the opportunity. His report was Ex. MW-1/6. There was no cross-examination of the witness by the workman.

Believing the testimony of the Enquiry Officer I find that he followed the rules of natural justice in the conduct of the domestic enquiry. Prosecution witnesses were examined in the presence of the concerned workman and defence witnesses were also examined. Therefore I find that the enquiry was proper and decide this issue in favour of the management.

Issue No. 2 :—

On this issue the management examined Shri Pawan Kumar, Clerk, who deposed that the enquiry report was placed before the General Manager who disagreed with the enquiry report and issued show cause notice to the workman, copy of which was Ex. MW-2/5. The workman gave his reply and final show cause notice was given and services of the workman were terminated,—*vide* Ex. MW-2/8.

I have gone through the enquiry report and find that the Enquiry Officer after discussing the evidence recorded by him reached the conclusion that the workman was not guilty of the misconduct alleged against him. He has given reason for reaching the conclusion. I have also gone through the order of the General Manager, Ex. MW-2/5. I find that the General Manager has not discussed the evidence recorded by the Enquiry Officer and reasons for disagreeing with the findings of the Enquiry Officer. I have gone through the evidence recorded by the Enquiry Officer and find that the management produced Shri Risal Singh, Adda Conductor, Shri Dalio Singh, Inspector and the workman examined Shri Bharat Singh, son of Shri Phoola Singh. I find from the statement of these witnesses that there was no ground for setting aside the findings by the punishing authority. It was incumbent upon the punishing authority to give strong reasons to differ with findings of the Enquiry Officer which was lacking in the case. As I have given earlier that the Enquiry Officer has exonerated the workman for the misconduct therefore the charges against him should have been dropped. I find that there was no cause for terminating of his services. The workman is therefore entitled to reinstatement with continuity of service with full back wages. The reference is answered and returned accordingly.

INDER SINGH DHULL,

Dated, the 7th April, 1983.

Presiding Officer,
Labour Court, Haryana,
Rohtak.

Endst. No. 846, dated 18th April, 1983.

Forwarded, four copies to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the I.D. Act.

INDER SINGH DHULL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

ASHOK PAHWA,

Commissioner & Secretary to Govt., Haryana,
Labour and Employment Departments.